

section, together with the death benefits paid under the alternative calculation, is not greater than the amount of payments described in paragraph (d)(2) of this section. In other words, the total amount of death benefits paid to dependents under the alternative calculation may be reduced if third-party payors have paid (or are expected to pay) for certain benefits so that such dependents will receive a total sum (combining the death benefit paid under the alternative calculation and the actual and expected benefits paid for by third-party payors) that is not greater than the death benefit that would be available under the alternative calculation if no third-party payor existed to pay such benefits.

(i) The amount of death benefits paid under the alternative calculation will be reduced for all payments made, or expected to be made in the future, by any third-party payor for:

(A) Compensation for the deceased person's loss of employment income on behalf of the dependents or their legal guardian(s);

(B) Disability, retirement, or death benefits in relation to the deceased person (including, but not limited to, death and disability benefits under the PSOB Program) on behalf of the dependents or their legal guardian(s); and

(C) Life insurance benefits on behalf of the dependents.

(ii) In calculating such reductions, the Secretary will deem any lump-sum payment made by a third-party payor under any obligation described in paragraph (d)(3)(A) of this section, as received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years.

(4) *Timing of payments.* Payments made under this paragraph will be made on an annual basis, beginning at the time of the initial payment, to the legal guardian(s) on behalf of the aggregate of the dependents receiving the payment. In the year in which the youngest dependent reaches the age of 18, payments under this section will be paid on a pro rata basis for the period of time before that dependent reaches the age of 18. Once a dependent reaches the age of 18, the payments under this alternative calculation will no longer

be made on his or her behalf. Because payments under the alternative calculation are to be made on behalf of dependents who are younger than the age of 18, if a dependent meets this requirement at the time of filing of the Request Form, but reaches the age of 18 (or is older than 18 years of age) at the time of the initial payment, no payment will be made to the dependent's legal guardian on his or her behalf under the alternative calculation.

[68 FR 70093, Dec. 16, 2003; 69 FR 7376, Feb. 17, 2004]

**§ 102.83 Payment of all benefits.**

(a) The Secretary may pay any benefits under this Program through lump-sum payments. If the Secretary determines that there is a reasonable likelihood that the payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in §102.82(d)) will be required for a period in excess of one year from the date the Secretary determines the requester is eligible for such benefits, the Secretary may make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits that the requester is eligible to receive under §§102.80, 102.81, and 102.82(d).

(b) Lump sum payments will be made through an electronic funds transfer to an account of the requester. However, if the requester is a minor, the payment will be made to the account of his or her legal guardian on behalf of the minor. In accepting such payments, the legal guardian of a minor requester is obliged to use the funds for the benefit of the minor and to take any actions necessary to comply with state law requirements pertaining to such payments. If the requester is a legally incompetent adult, the legal guardian must establish a guardianship or conservatorship of the estate account with court oversight, in accordance with State law, and payment will be made to that account.

(c) The Secretary may, at his discretion, make interim payments of benefits under this Program, even before he makes a final determination as to the total type and total amount of benefits that will be paid. The Secretary may, for example, make an interim payment of medical benefits that have been calculated before a final determination on benefits for lost employment income is completed, or of past medical benefits that have been calculated before a final calculation of future medical benefits is completed. The Secretary may, in his discretion, make an interim payment even before a final eligibility or benefits determination is made (e.g., if a piece of documentation has not been obtained because a person with a severe vaccine-related injury is hospitalized, but all other documentation is consistent with the requester meeting the eligibility requirements). If such a requester's documentation is incomplete, the requester must submit the required documentation within the time-frame determined by the requester. Such a requester must agree that he or she will be obliged to repay the Secretary such benefits in the event that such payments are later determined to be inappropriate. Any payments made on an interim basis will not entitle a requester to seek reconsideration of the Secretary's decision on these benefits until the Secretary makes a complete benefits determination.

**§ 102.84 The Secretary's right to recover benefits paid under this program from third-party payors.**

Upon payment of benefits under this program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for (or provide) such benefits and may recover from such third-party payor(s) the amount of benefits paid up to the amount of benefits the third-party payor has or had an obligation to pay for (or provide). In other words, the Secretary may pay benefits before the requester receives a payment from a third-party payor in specific circumstances. In those circumstances, the Secretary has a right to be reim-

bursed by the third-party payor. The circumstances in which the Secretary may assert this right include those in which the Secretary pays benefits under this Program to a requester before a final decision is made that a third-party payor has an obligation to pay such benefits to the requester. Requesters receiving benefits under this Program (or their representatives) shall assist the Secretary in recovering such benefits. In the event that a requester receives a benefit from a third-party payor after receiving the same type of benefits from the Secretary under this Program, the Secretary has a right to recover the amount of the benefits awarded from the requester.

**Subpart J—Reconsideration of the Secretary's Determinations**

SOURCE: 68 FR 70096, Dec. 16, 2003, unless otherwise noted.

**§ 102.90 Reconsideration of the Secretary's eligibility and benefits determinations.**

(a) *Right of reconsideration.* A requester has the right to seek reconsideration of the Secretary's determination that he or she is not eligible for payment. In addition, a requester who asserts that the amount of the benefits paid by the Secretary (or the fact that certain benefits were not paid or payable) is incorrect may also seek reconsideration. Letters seeking reconsideration must be in writing, describe the reason(s) why the decision should be reconsidered, and be postmarked within 60 calendar days of the date of the Secretary's decision on the request. Because no new documentation will be considered in the reconsideration process, the letter seeking reconsideration may not include or refer to any documentation that was not before the Secretary at the time of his initial determination.

(b) *Letters seeking reconsideration.* A requester, or his or her representative, may send a letter seeking reconsideration through the U.S. Postal Service, commercial carrier, or a private courier service. The Secretary will not accept letters seeking reconsideration electronically or by hand-delivery.